United Nations A/HRC/37/NGO/162

General Assembly

Distr.: General
15 February 2018

English only

**Human Rights Council**
**Thirty-seventh session**
26 February-23 March 2018
Agenda item 3
**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02375(E)
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# Products Suspected of Being Child Pornography are being Openly Sold in Japan

## I. Introduction

Child pornography is a fundamental violation of a child's human rights prohibited by Japanese law and the Convention on the Rights of the Child (CRC). The importance of eradicating child pornography is highlighted by the international community's commitment to implement Sustainable Development Goal target 16.2, which refers to ending all forms of violence against children, including sexual violence and online violence.1

In 2016, Human Rights Now ("HRN"), an international human rights NGO based in Japan, has conducted an independent investigation finding that child pornography is widely available in Japan and authorities do not effectively police, monitor or regulate it.2

HRN is deeply concerned by these findings, which demonstrate that current efforts are not adequate to achieve SDG target 16.2 in Japan.

## II. The Problem and Legal Regulation of Child Pornography in Japan

In Japanese domestic law, the 'Act on Punishment of Activities relating to Child Prostitution and Child Pornography and the Protection of Children'[3] was adopted on 18 May 1999, based on the international norms enshrined in Article 34 of the CRC. The law has been revised in 2004 and 2014. The 2004 revision sought to incorporate the Optional Protocol to the CRC and the Council of Europe's Convention on Cybercrime. The 2014 revision marked 10 years since the last revision and focused on the rise of the internet, which has led to a strong increase in the number of victims of child pornography.

Japan's revised law on child pornography defines the term 'child pornography' under three items in Article 2(3). Items (i) and (ii) define punishable products as any image involving sexual intercourse or touching of sexual organs which stimulates sexual desire, respectively. While Items (i) and (ii) are straightforward in intent, Item (iii) has provoked disputes. Item (iii) defines child pornography as "any image of a child wholly or partially naked, in which sexual body parts of the Child … are exhibited or emphasized and arouses or stimulates sexual desire"[4] The core intent of Item (iii) is to ensure that even products not involving sexual intercourse could still be punishable as child pornography.

However, authorities are reluctant to monitor, investigate and prosecute Item (iii) proudcts. Their interpretation of the law is too narrow and thus production and distribution of Item (iii) products continues with broad impunity. Also materials which fall within Item (iii) under the category of *chakuero* ("clothed ero", i.e., images where the performer is wearing clothes) are widely distributed throughout Japan, subjecting these children to sexual exploitation.

## III. HRN's Investigation of Child Pornography in Japan

From May 2015 Human Rights Now ("HRN"), a Tokyo-based international human rights NGO, investigated whether the Child Prostitution and Child Pornography Act effectively regulated and criminalized child pornography. Based on this one-year investigation covering both online material and visits to physical retail stores in Tokyo's Akihabara district, HRN can confirm that products suspected to be child pornography are widely sold in Japan. This includes:

- Many DVDs blatantly advertised as child pornography;

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1 Sustainability Development Solutions Network, http://indicators.report/targets/16-2/

2 Human Rights Now, "Report on the status and challenge of ending child pornography in Japan", 11 Nov. 2016, http://hrn.or.jp/eng/news/2016/11/11/japan-childpornography-report/

3 "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children", Act No. 52, 26 May 1999, , translation available at: http://www.cas.go.jp/jp/seisaku/hourei/data/APARCP.pdf.

4 Id.

- DVDs containing pornographic material which advertise their performers to be younger than eighteen;
- DVDs containing pornographic material where performers are suspected to be younger than eighteen by their physical appearance.

These DVDs are widely circulated as commercial products, and they are openly displayed and sold in retail stores, as well as available through online channels.

### A. Factors contributing to suspected child pornography's availability

The investigation clearly revealed that material suspected of containing or proclaiming to be child pornography were widely available. Several factors contribute to this situation:

1) Police do not regulate some child pornography because they cannot easily identify if minors are involved due to unknown the ages of performers.
2) Monitoring systems for screening material, distribution, and sales which are meant to detect underage performers do not function properly;
3) A substantial monitoring system for pornographic material falling under Art. 2.3(iii) is lacking.

Especially problematic are videos or images branded *chakuero*. These videos do not include explicit sexual conduct or sexual relations and are therefore regarded as a non-adult product. Because of this, many *chakuero* manufacturers are exempt from any screening procedure established by relevant private sector actors. Since *chakuero* is widely sold in Japanese stores, there seems to be a lack of clarity as to its legal position. From the fact that products falling under Item (iii) are publicly sold in stores, it seems that the stores do not fully understand the regulation of this category and believe that a genre such as *chakuero* is allowed by law.

### B. Online Distribution of suspected child pornography

In addition, these products are sold online. Online shopping websites widely offer material suspected of containing child pornography. However, the Internet Contents Safety Association (ICSA), a private sector association, has made efforts to block child pornography. In addition, search engines like Google take steps to prevent child pornography from appearing in their search results. Unfortunately, in spite of these efforts, child pornography, especially fall under Article 2.3(iii)) is widely available online and easily found through search engines.

The following factors contribute to this situation:

1) Relevant manufacturers do not have power to check the age of performers;
2) Material falling under Article 2.3(iii), including *chakuero* or image videos, are not fully recognized or considered as child pornography.

A large part of the solution should be communicating accurate knowledge about the Child Pornography Act, since many Japanese believe *chakuero* (and other materials falling under Article 2.3(iii)) is not considered child pornography. HRN strongly demands a zero-tolerance policy to be enacted and asks the relevant institutions to communicate clear guidelines on which materials amount to child pornography.

## IV. Recommendations

Since our report was released in 2016, both the government and private sector have made efforts to tackle with these problems. HRN commends such efforts, however the effort is still slow to address deeply embedded problems surrounding the child pornography in Japan.

In order to protect children from commercial sexual exploitation and online violence, HRN wishes to encourage the Japanese authorities and industry leaders to enhance enforcement efforts, increase monitoring, and tailor the law to adequately ban all forms of child exploitation.

1. To the Government of Japan (the Cabinet Office and relevant cabinet ministers):

- Investigate (a) the reality of production, sales, circulation, and delivery of child pornography, (b) the background of children who get involved in child pornography, and (c) relevant industries and harmful practices, and take necessary steps to prevent such production, circulation, and harm.
- Consider effective supervision methods and legal regulations so that the production agencies that employ children under the age of eighteen actively work to protect children and employees.
- Actively communicate that pornographic material falling under Article 2.3(iii) amounts to child pornography and make its eradication an important mission to all government ministries, municipalities, public institutions, relevant industries and the community at large
- Consider amendment of law to ensure all child pornography to be properly eradicated

2. To police authorities:

- Designate the elimination of child pornography as a priority; allocate necessary financial resources and manpower to it; and establish a zero-tolerance policy for child pornography.
- Confirm the age of performers through its supply chain and actively follow up on cases where the age of the performers is not confirmed.
- Inform all police stations that pornographic material falling under article 2.3(iii) amounts to child pornography. Furthermore, members of the police force should see this issue as a priority and routinely conduct searches and follow up activities at retail stores in their neighborhoods.
- Strengthen its search capability, develop and educate human resources, ensure necessary manpower at each police station, and strengthen existing regulations.

3 .To industry stakeholders:

- Adopt a zero-tolerance policy for child pornography despite the public opinion of genres like *chakuero*
- Adopt a zero-tolerance policy for the production, circulation, sale, delivery, and rental service of pornographic material featuring children, including but not limited to material falling under Art. 2.3(iii).
- Announce a uniform and tightened screening standard applicable to all products in line with current and applicable legal standards.
- Confirm performers' age in the screening phase by using official documents.
- Introduce self-regulation measures for products which allude to being child pornography.
- Establish and carry out guidelines which prohibit retail and online stores which feature child pornography or products suspected as child pornography from handling such products.